

ISSUE DATE:

October 19, 2005

DECISION/ORDER NO:

2758

PL041188

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Trinison Management Corporation, Danigire Holding Incorporated, Star Oak Developments Limited *et al* have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Oakville to establish the North Oakville East Secondary Plan for the land in the general area bounded by Dundas Street, Sixteen Mile Creek, Highway 407 and 9th Line
 Approval Authority File No.42.121.11
 OMB File No. 0040214

APPEARANCES:**Parties****Counsel/Agent***

Town of Oakville

Catherine Lyons, Robert Howe
and A. Benedetti

Region of Halton, Conservation Halton

Stephen Waqué

Mattamy Homes Limited, Eno Development
Limited, Oakville 23-2 Inc. Bressa Developments
Inc.

Roger Beaman

Trinison Management Corporation

Randy Smith

Star Oak Developments Limited and Mel Oak
Developments Inc.

Russ Cheeseman

Osmington Inc. and Danigire Holding Incorporated

Ira Kagan

Green Ginger Developments

Tom Lederer and L. Bisset

Clear the Air Coalition Inc.

Rob Burton*

**DECISION DELIVERED BY R. D. M. OWEN ON A MOTION TO EXCLUDE
 EVIDENCE AND ON SETTING A HEARING DATE AND ORDER OF THE BOARD**

The matter before this panel of the Board is an application for an Official Plan Amendment for the Town of Oakville to establish the North Oakville East Secondary

Plan (the Secondary Plan) for all the lands in the general area bounded by Dundas Street, Sixteen Mile Creek, Highway 407 and the 9th Line. This application was filed on March 5, 2004 by the appellants who own some but not all of the lands in this planning area. On November 22, 2004, one appellant followed by others appealed the application for the Secondary Plan because of the failure of the Town of Oakville to hold the necessary public meeting within the *Planning Act's* statutory time frame. A motion has been brought by the appellants that asks the Board to exclude any evidence of the Region of Halton's Official Plan Amendment 25 (ROPA) that has been adopted by Regional Council, but is under appeal to this Board differently constituted. Their application for the Secondary Plan was filed on March 5, 2004, before the ROPA 25 was adopted. Regional Council adopted ROPA 25 on June 23, 2004.

Some history is helpful to put the matter in perspective. The planning for North Oakville began with the Regional Official Plan Amendment 8 in force June 22, 1999, which brought certain areas of the Region including North Oakville into the "urban" area designation in the Region's Official Plan. Official Plan Amendment 8 was followed by the Town's Official Plan Amendment 198 (O.P.A. 198), approved by this Board after appeals and several pre-hearing conferences and a settlement among most parties, many of whom are now parties to this hearing. O.P.A. 198 had as its purpose: the incorporation of the lands north of Dundas Street into the Town's Urban area as identified within ROPA 8; establish the conditions for the development including the protection and enhancement of natural features for the lands north of Dundas Street; and redefine the Town's municipal structure to reflect this change, including revisions to the plan concept, objectives, planning period, planning population and employment lands. It is under the directions of O.P.A.198 that the hearing on the proposed Secondary Plan is to be guided.

The Town, the Region the appellants and others were all involved in O.P.A. 198, the work done before its approval and the considerable work done since. The complication, if it can be called that, is that the Region before, during and after O.P.A.198 was working on the five-year review of its Official Plan. For example, specific reference to this was inserted in O.P.A.198 at the request of the Region in the section 4.1e) dealing with "General Development Objectives" Environment and Open Space.

It is clear to the Board based on the submissions of Counsel and the affidavit material filed, that there is an interrelationship between the studies that were done before O.P.A.198 and those that followed, including ones done for ROPA 25. The results of those studies are relevant to a hearing to decide what is an appropriate secondary plan for this part of the Town.

The position of the Region, as established by questioning of the Board, is that they intend to seek certain policies that appear in ROPA 25 be inserted into the Secondary Plan for the Town of Oakville. The Region will lead evidence both of the studies on which they rely and with the appropriate expert witnesses seek to convince the Board that the policies they advocate are the best land use planning policies for the Town of Oakville's Secondary Plan. The Board acknowledges that this is an unique situation. The upper tier municipality intends to have their Official Plan policies inserted into the lower tier Official Plan. They do not seek to ensure that the policies in the lower tier Plan merely conform to the upper tier Plan, but be the same. The Town does not want the policies of the ROPA 25 to be "determinative" of the North Oakville Secondary Plan, but did not appear to object to the Region's position that the Region will seek the ROPA 25 policies be inserted into the Town Plan.

The appellants take the position that the "Clergy Principle" requires that Official Plan policies that come into force after the date of an application for a development permission under the *Planning Act* have no relevance and should not be admitted into evidence to determine that planning permission. All Counsel thoroughly argued the myriad cases involving this principle and the Board has carefully reviewed and considered these cases. The Board finds that this situation is different than those addressed in the cases cited. In none of those cases did the municipality seek to have the actual policies of the "new" Official Plan Amendment inserted into the Official Plan Amendment before the Board, but simply rely on them as evidence of good planning. The Board considers there to be a substantive difference. What the Region seeks in this case, is the right to lead evidence both by studies and experts that could convince the Board, that certain policies in ROPA 25 in fact should be the policies in the North Oakville Secondary Plan. This is not the same as submitting that another Official Plan's unapproved or approved policies, but effective after the subject application should be

given weight in determining the planning permission sought. The Region seeks to have the Board adjudicate on those Regional policies as being appropriate policies for the Town's Secondary Plan. As stated by Counsel for the Region in answer to a Board question, the Region's position is, that it insists these policies be put in the Town's Secondary Plan.

The matter for the Board to determine on these appeals is what represents a sound Secondary Plan for this part of North Oakville. It will be decided within the context of the policies of the Town's O.P.A.198 that guide and give direction to the formation of this Secondary Plan. To the extent that any party proposes policies for this Secondary Plan based on good planning principles and supported by cogent evidence, they have a right to be heard. Clearly, the Secondary Plan put forward by the appellants will be tested by those opposed and the Board will undoubtedly hear that there are better land use planning policies to implement O.P.A.198 both from the Town, the Region and others. That is the nature of Ontario Municipal Board hearings.

However, the Region also submits that additional weight should be given to the policies they will advocate because Regional Council adopted them. The appellants dispute this submission. It is worthy of note that the Board is not being asked to be "respectful", to use Counsel for the Region's expression, of the decision of the Town of Oakville's Council, but that of the Region of Halton's Council. This is a hearing concerning the Town of Oakville's Official Plan not a hearing of the Region of Halton's Official Plan Amendment 25. The Board must exercise its independent judgment on the merits of the application before it. The merits of the application are best determined and should be determined based on the planning evidence submitted at the hearing. As is often the case at Board hearings, the Board will hear considerably more evidence than a municipal Council will have heard and that is definitely true in this case if the time frames of six to nine months of hearing time is actually required.

The motion is allowed in part, in that, the Region will be permitted to lead evidence in support of policies it seeks to have put into the Oakville Secondary Plan, but that evidence must be supported by the appropriate studies and expert evidence and not by mere reliance on the fact that they are the policies of ROPA 25 or as policies adopted by Regional Council.

The appellants also raised a concern about future planning permission that would be sought once the Secondary Plan was determined. They asked the Board to rule that the policies in ROPA 25 would not be admissible or relevant to those future proceedings. The Board finds that it is premature to make such a ruling. Until the Secondary Plan is determined and the policies therein, the Board cannot properly determine if the "Clergy Principle" applies.

These are the orders of the Board.

The remaining matter from the pre-hearing conference held on October 3, 2005 is whether to set a fixed hearing date for the commencement of the hearing. The appellants sought a fixed hearing date. They proposed a March commencement and expected the duration to be six months. The Town proposed a start date of June 2006 and expected between six and nine months of hearing time. The Region argued that the Board should not set a hearing date until the January pre-hearing conference, as to do so would require the parties to focus not on defining and hopefully settling or resolving issues but in defending them. It would be better to use their respective energies on efforts at resolving issues or defining them and not on how the issues can be advanced and defended and who witnesses might be. The Board concurs.

The Board will not fix a hearing date at this time. At this time, the Board is satisfied that it is premature to proceed to set a hearing date until issues are established. At the January pre-hearing conference the parties must have an issues list prepared and the Board will issue a procedural order and will hear further submissions on fixing a hearing date. Again, the Board cautions the parties that at that time the Board will need much more detail why the time frame of six to nine months for a hearing is warranted.



R. D.M. OWEN
VICE-CHAIR